

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 63209-4-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
Douglas RAY Huber,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: May 3, 2010
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BECKER, J.—Douglas Huber pled guilty to second degree burglary and agreed to pay restitution. He appeals the order of restitution. We conclude the victim’s testimony supplied sufficient evidence to prove the items taken during the charged offense and the value of those items.

The State charged Douglas Huber with one count of second degree burglary, alleging that he entered or unlawfully remained in a building belonging to Steven Rapp on August 31, 2007, with the intent to commit a crime. Huber pleaded guilty as charged and agreed to pay restitution in full on the charged count. The State asked for restitution of more than \$28,000. The trial court entered a restitution order for \$6,200. Huber argues that the trial court erred by

ordering restitution for items that were not taken during the August 31 burglary.

The trial court has discretion to determine the amount of restitution. We will find abuse of that discretion only where its exercise is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. State v. Pollard, 66 Wn. App. 779, 785, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992).

A court may order a defendant convicted of a crime to pay restitution whenever his crime caused a loss to another. RCW 9.94A.753(3). A defendant cannot be required to pay restitution beyond the crime charged. State v. Johnson, 69 Wn. App. 189, 191, 847 P.2d 960 (1993). Restitution is allowed only for losses that are “causally connected” to the crime charged. State v. Kinneman, 155 Wn.2d 272, 286-88, 119 P.3d 350 (2005).

The amount of restitution must be established by substantial credible evidence which does not subject the trier of fact to mere speculation or conjecture. State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038, review denied, 121 Wn.2d 1023 (1993). The State must establish the amount of restitution by a preponderance of the evidence. State v. Dennis, 101 Wn. App. 223, 226, 6 P.3d 1173 (2000). “Certainty of damages need not be proven with specific accuracy.” State v. Pollard, 66 Wn. App. at 785.

Huber agreed that the court could consider the affidavit of probable cause as a factual basis for his guilty plea. The State contends that by doing so, he

agreed to the use of that affidavit as a basis for restitution. Huber, on the other hand, contends that his agreement did not extend that far. The parties do not cite authority for their respective positions. We need not resolve their dispute on this point. The court had sufficient evidence based on the plea agreement itself as well as the testimony of the victim.

As part of the plea agreement, Huber made the following “statement of defendant on plea of guilty”:

On or about August 31, 2007, I was an accomplice to a second degree burglary. I aided another person who, with intent to commit the crime of theft of an acetylene torch from a shed belonging to Steven Rapp, unlawfully entered that shed.<sup>[1]</sup>

Huber argues that under the “real facts” doctrine, the court could not order restitution for anything other than the torch that he mentioned in his statement.

The “real facts” doctrine applies to restitution hearings, meaning that “the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing.” RCW 9.94A.530(2); State v. Tindal, 50 Wn. App. 401, 403, 748 P.2d 695 (1988). Huber overlooks the fact that as part of the plea agreement, he specifically agreed to restitution for the charged count, as referenced in a particular police report.<sup>2</sup> The charged count was the August 31 burglary, and the police report contains evidence supporting the conclusion that the items for

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<sup>1</sup> Clerk’s Papers at 50.

<sup>2</sup> Clerk’s Papers at 61.

which restitution was ordered were taken in that burglary.

In addition, the real facts doctrine permitted the trial court to rely on information proven during the restitution hearing. At a restitution hearing on January 28, 2007, Rapp testified about the items he was missing. Huber objected when Rapp testified about items that were missing in previous burglaries. The trial court sustained Huber's objection to the scope of the testimony and continued the hearing with instructions to focus on "what losses there were on the date of this crime for which the defendant was charged."

When the hearing continued, Rapp had some difficulty recalling the specific items that had disappeared after each burglary, but he ultimately testified that he was sure or reasonably sure that the items taken during the August burglary were an acetylene torch system, a sandblaster, a remote control car, a heavy winch, and a 1969 Camaro hood.

The trial court recognized the statutory limitation permitting restitution to be ordered only for property that was taken during the August 31 burglary. The trial court also recognized that the task was complicated because Rapp had experienced a series of break-ins and thefts. Nevertheless, the trial court was

persuaded from the evidence that Mr. Rapp has done the very best that he can in identifying what items were taken on that occasion as distinct from items that were taken on other occasions. I realize there's some inconsistency in his statement to police or his prior testimony. And I think he candidly indicates that after so much time and so many losses, things begin to simply become part of the whole, and it becomes difficult for him to separate out. But despite those inconsistencies, his testimony has been credible. I think he's done the best he can to restrict his testimony to the losses on this

occasion knowing that he cannot recover for other losses from other occasions.

Huber argues this case is like State v. Miszak, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993), where the defendant's statement on plea of guilty admitted stealing only one piece of jewelry, but the trial court ordered restitution for 13 items. That order was reversed on appeal because the losses that took place over a period of months were not shown to have been incurred as a result of the theft charged on the date designated in the information. Unlike in Miszak, here the trial court did not order restitution for items taken on days other than August 31. The court properly sustained Huber's objection to Rapp's testimony about items missing after burglaries that took place other than on that date.

Huber had an opportunity to cross-examine Rapp, and the trial court found Rapp's testimony credible. After reviewing the evidence before the trial court, we can find no basis for holding that the trial court abused its discretion by finding that the missing items were causally connected to Huber's conviction for burglary in the second degree. Huber was not ordered to pay restitution for uncharged crimes.

Huber also contends that the State did not supply sufficient evidence of the value of the missing items. At the hearing, Rapp placed a value on his Camaro's hood that was higher than the price of some Camaro hoods offered for sale over the internet. However, Rapp testified that his 1969 Camaro hood was an original and that originals are worth more than the reproductions on which

Huber based his competing price estimate. Rapp testified that he shopped around for a comparable hood and found one listed for \$2,500. The trial court agreed that the hood was worth \$2,500 on the basis of Rapp's testimony about the relative value of different types of hoods.

As for the other items, Huber argues that the trial court erred by splitting the difference between Rapp's high and low estimates. But the trial court found Rapp's testimony credible. A trial court does not engage in speculation or conjecture by relying on the valuation testimony of a credible witness. And because the exact amount of the damages need not be proven within scientific accuracy, the trial court acted within its discretion by ordering restitution within the range provided by Rapp while testifying under oath. We conclude that the trial court did not abuse its discretion by relying on Rapp's valuation testimony during the restitution hearing.

Huber argues that this case is like State v. Dedonado, 99 Wn. App. 251, 991 P.2d 1216 (2000), in which the trial court reversed a restitution order because the State failed to prove that a different model replacement signal generator was equivalent to the signal generator damaged during the crime. We disagree. In Dedonado, the victim did not testify and the State did not present any other evidence that would have established why the cost of the replacement signal generator proved the value of the damaged signal generator. Unlike in Dedonado, Rapp testified as to valuation, did not attempt to establish the value

of his missing hood based on the value of a different model hood, and explained why an original hood was worth more than a reproduction. In short, the award of restitution was not based on speculation or conjecture. Rapp's testimony provided a reasonable basis for estimating the loss.

Affirmed.

Becker, J.

WE CONCUR:

Leach, A.C. J.

Cox, J.